(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

Docket No. _____

Supreme Court of the United States

COUNTY OF SAN DIEGO, Petitioner and Respondent,	)
vs.	)
	)
ANDY EUSTON SCISSELL, Respondent and Appellant.	)

On Petition for Writ of Certiorari to the Supreme Court of California

Petition for Writ of Certiorari

Andy Euston Scissell, In Pro Per
652 E. Avenida De Las Flores
Thousand Oaks, CA 91360-4945
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38pp

QUESTION PRESENTED

Title IV-A, (42 U.S.C. 601 et seq.) and Title IV-D (42 U.S.C. 651-662), are portions of the Federal Social Security Statutes. Under the sections dealing with Temporary Assistance for Needy Families (TANF, formerly "AFDC") the federal government gives money to the states for aide payments to needy families. The states then are required to try and collect at least a portion of the aide back from the non-custodial parent.

The precise legal question to be answered is, what does the phrase, "Any amounts collected from a noncustodial parent under the plan shall reduce, dollar for dollar, the amount of his obligation" mean? This language is found in 42 U.S.C 656(a)(3) and is in direct reference to a parent's obligation to reimburse the State for the aide provided, 42 U.S.C 656(a)(1) and (2). Does it mean that the County of San Diego (or any other division of the State of California) can charge interest on AFDC (now "TANF") reimbursement orders or judgments? Put another way, how can California charge and collect interest when neither the statute or the applicable C.F.R.s, authorize it? The Code of Federal Regulations Sections 45 CFR 302.50(d) and 302.75 authorize a "late fee" but not interest.

The California Appellate court concluded it could collect interest because it determined that collecting interest was a part of the states "local collection processes". It further failed to make a distinction bewteen "support orders" and "child support".

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Federal

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State

State of Ohio v Barron
(1977) 52 Cal. App. 4th 62, 70-71 8

Federal Statutes

11 USCS 362 7
42 USCS 653(p) 9
42 USCS 656 1,4,9
42 USCS 659(i)(2) 9

Federal Code of Regulations

45 CFR 302.50 1,9
45 CFR 302.75 1,9

TABLE OF LOWER COURTS DECISIONS

There are no "official citations". The state court decisions were unpublished. The docket number for the case before the California Court of Appeal, Fourth District, Division One is Do33956. The docket number from the California Supreme Court is S089370.

BASIS FOR JURISDICTION

The order denying review before the California Supeme Court is dated August 9, 2000.

A federal question is involved, 42 U.S.C 656.

No constitutional issues are raised.

STATUTES IN ISSUE

The statute in issue, 42 U.S.C 656 is set forth herein. 42 U.S.C 608(a), which section 656 referrs to, is set forth in the appendix.

U.S. Code as of: 01/05/99

Section 656. Support obligation as obligation to State; amount; discharge in bankruptcy

(a) Collection processes

(1) The support rights assigned to the State pursuant to section 608(a)(3) of this title or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(2) The amount of such obligation shall be -

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary.

(3) Any amounts collected from a noncustodial parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).

(b) Nondischargeability

A debt (as defined in section 101 of title 11) owed under State law to a State (as defined in such section) or municipality (as defined in such section) that is in the nature of support and that is enforceable under this part is not released by a discharge in bankruptcy under title 11.

FACTUAL BACKGROUND

1. Relevant Underlying Facts. None of the facts in this case are in dispute. On September 13, 1982 the San Diego District Attorney, filed a complaint against Appellant for reimbursement for AFDC, (now TANF). On September 21, 1982 Appellant signed a "Statement of Respondent and Agreement, Stipulation and Judgement" which was filed on October 25, 1982. In the stipulation he agreed to reimburse the County of San Diego the sum of $7,200.00 at the rate of $50.00 per month. There was no order for reimbursement of on going aide because the children were not currently receiving aide. From the time the judgment was entered, until the time of the hearing on Appellant's motion, no changes had been made to it. The stipulated judgment did not provide for interest on the $7,200.00 dollars.

After the judgment was signed and filed, Appellant made various payments. A complete copy of the payment history was prepared by the D.A.'s office. The accuracy of this payment history, (in terms of payments made or otherwise collected) has not been challenged by either party and is not an issue herein.

The payment history shows that Appellant had paid a total of $7,427.80. All of Appellant's payments were credited toward "interest". None of his payments were credited toward reducing the principal debt owed. The last payment was on 11/12/95 for $1,156.00. This was a payment made directly from a Workman's

Compensation Award, (at that time Appellant was determined to be permanently disabled).

When this last payment was made Appellant believed he had fulfilled his obligation. Apparently the County of San Diego thought so too, because he received a "Child Support Consumer Credit Report Notification" indicating the balance due was "zero" on 1/27/96.

In March of 1996 the D.A.'s Office began collection efforts again. It contended that Appellant owed the sum of $9,366.74, and it threatened to take his California drivers license.

On July 14, 1997 Appellant filed a Chapter 7 Bankruptcy. A discharge was granted on October 27, 1997. While Appellant was in Chapter 7 the County of San Diego did in fact have Appellant's drivers license revoked. It was reinstated on August 8, 1997, probably because revoking his drivers license while he was in Chapter 7 was a violation of the automatic stay, (11 U.S.C. section 362).

On September 14, 1998 Appellant's drivers license was again suspended. The D.A. refused to reinstate Appellant's California drivers license without additional payments.

2. Relevant Procedural Facts. In response to the DA's efforts to collect additional payments Appellant filed a motion seeking injunctive relief for the return of his drivers license and for attorney's fees and costs. In the motion Appellat raised the federal question which is involved in this petition. The text of the

motion is contained herein in the appendix. The motion was heard by the Honorable Judge Randall W. Magnuson as a law and motion matter on June 10, 1999. The ruling on the motion was dispositive of all issues raised in the motion. The court denied Appellant's request that the interest be stricken, did not rule on attorney's fees and costs, ordered Appellant to pay the D.A.'s office the sum of $100.00 per month as a condition of reinstating his driver's license and set the matter for review on 12/9/99.

The California Court of Appeal upheld the decision of Judge Magnuson in an unpublished decision dated May 15, 2000. The California Supreme Court denied a petition for review on August 9, 2000.

WHY REVIEW SHOULD BE GRANTED

In the State of California obligor parents are routinely charged interest on past due TANF orders and judgments despite the fact that the only statute, (Section 656), on the subject under Title IV-A, (42 U.S.C. 601 et seq.) and Title IV-D (42 U.S.C. 651-662), specifically prohibits, on it's face, the collection of interest . This is an important issue to all TANF obligor parents throughout the state of California.

The consequences of being required to pay the interest are significant. This is particularly important now that the State of California via it's various county agencies can and does condition

the retention of such things as drivers licences and professional licenses on continued regular payments.

In this case Appellant has paid the principal and then some. Originally he was ordered to pay $7,200.00 at the rate of $50.00 per month on 9/21/1982. His payments were admittedly intermittent. However at the time he was ordered to pay $100.00 per month to keep his drivers license he had paid $7,427.80 to the County of San Diego and had a balance due of $9,366.74. This was on 6/10/1999.

Review is warranted because California is not free to do as it pleases with respect to these collection efforts. The TANF program is based on "cooperative federalism", The State of Ohio vs Barron Jr. (1997) 52 Cal. App. 4th 62, 70-71 and Jackson v Rapps 947 F2d 332, 335-336 (8th Cir. 1991) rehearing denied, certiorari denied 112 S.Ct. 1561, 503 U.S. 960. California must apply the Federal law and it must do so correctly. There is no federal decision which addresses this very important issue.

There are several serious problems with the California Appellate Court 's interpretation of the statute:

(1) The statute defines the "obligation" as "the amount specified in the court order which covers the assigned support rights", 42 U.S.C. 656 (a)(1) and (2)(A). If that is what is being reduced "dollar for dollar", by "Any amounts collected...", where do the interest payments fit in the statutory scheme?

(2) The meaning assigned to the plain language in the

statute by the lower Court reduces the phrase, "Any amounts collected from a noncustodial parent under the plan shall reduce, dollar for dollar, the amount of his obligation" to "superfluous". This is not permissible., It also ignores the Code of Federal Regulations. which authorize a "late fee" but not interest, 45 C.F.R, 302.50(d) and 45 C.F.R. 302.75.

(3) The lower Court further held that the phrase "to be collectable under all applicable State and local processes" (42 U.S.C. 656 (a)(1)) means that the State could collect interest. What is the correct interpretation of the term "local processes" that does not render the balance of the statute (42. U.S.C. 656(a)(3)) meaningless?

(4) The amounts referred to in the statute are not "child support" and this is not a "support order". Those are dealt with elsewhere in the statutory scheme, 42 U.S.C. 653(p) and 659(i)(2).

Dated: November 1, 2000

_____

Andy E. Scissell,
In Pro Per

APPENDIX

1. TRIAL COURT MINUTE ORDER:
The Court Orders That:

Support Payments. Respondent shall pay on the 1st day of each month

Arrearages at the rate of $100.00 per month effective 7-1-00

No provision of this Judgment shall operate to limit any right to assess and collect interest and penalties as allowed by law. Interest shall accrue on the entire principal balance owing and not on each installment as it becomes due. All liquidation payments shall be subject to modification There shall be no limitation collection from sources other than salary or wages without further notice as allowed by law.

Other Terms - All payments shall be made by wage assignment to the Office of the District Attorney. Any payments not being paid by wage assignment shall be made directly to the Office of the District Attorney.

Existing orders remain in effect.

Respondent shall notify the Office of the District Attorney of any change in address, income or employment within 48 hours of such change.

Health Insurance coverage - Respondent shall provide health insurance coverage for the child(ren) if available at no or reasonable cost; a Health Insurance Coverage Assignment shall issue; and obligor shall complete a Health Insurance Form (DHS-6110) and return it to the Office of the District Attorney within 20 days of health insurance coverage becoming available to the

obligor at no or reasonable cost

Respondent's Driver's License Number Ro794192 suspension is lifted forthwith pending review hearing and to remain current as to all support orders

Calendering - this matter is continued to 12-9-99 at: 12:45 in Dept. 44 in the CENTRAL Courthouse, 220 West Broadway, San Diego. Respondent is ordered to return on that date and time.

Notice - All interest must be paid in full before your debt can be satisfied. You will not receive any credit for any payments made to anyone other than the Office of the District Attorney.

IT IS SO ORDERED: Dated 06/10/99

RANDALL W. MAGNUSON

2. CALIFORNIA APPELLATE DECISION

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FileD
Stephen M.Kelly,
Clerk
May 15, 2000

COUNTY OF SAN DIEGO,	)	D033956
	)	
Plaintiff and Respondent,	)	(Super. Ct. No.

491936)

v.

ANDY EUSTON SCISSELL,

Defendant and Appellant.

APPEAL from an order of the Superior Court of San Diego County, Randall W. Magnuson, Judge. Affirmed.

Andy Euston Scissell appeals from a post-judgment order denying his motion to waive interest on a judgment for support arrearages. Scissell contends (1) the State of California may not collect interest on support payments under the Child Support Enforcement Act 1 (Act), 42 U.S.C. § 651 et seq.2; (2) any

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1
The Child Support Enforcement Act is the popular name of Public Law 93-647, which enacted part D of subchapter IV of the Social Security Act. (See Historical and Statutory Notes, 42 U.S.C.A. (1991 ed.) foll. § 1305, p. 481.)

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amounts he may owe under the Act were discharged in bankruptcy; and (3) the court should have granted him attorney's fees under Code of Civil Procedure section 1021.5. We affirm.

FACTS AND PROCEDURAL HISTORY

On October 25, 1982, Scissell stipulated to paternity of Jeanette Lea Scissell, born November 1, 1968, and Stacy Ann Scissell, born April 25, 1971. Under the stipulation agreement, the court ordered monthly payments of $50.00 until $7,200.00 was paid in full.3 Scissell made payments of various amounts between December 1982 and November 1995. In January 1996, the

Department of Revenue and Recovery sent Scissell a Child Support Consumer Credit Report Notification stating his support balance was $0.

On March 5, 1996, the San Diego District Attorney sent Scissell a letter advising him the balance in his account, which had been audited for interest, was $9,366.74. On July 14, 1997, Scissell and his spouse filed a Chapter 7 Bankruptcy petition,

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2
All further statutory references shall be to Title 42 of the United States Code unless otherwise specified.

3
The Judgment reads in part: "[T]he Court enters Judgment against Respondent and orders Respondent to pay $50.00 per month by cashier's or certified check or money order effective December 1, 1982 until the sum of $7,200.00 as of 8/82 is paid in full, to the Department of Revenue and Recovery and continuing each month thereafter until $7,200 is paid in full. Upon default by Respondent in any of these payments, the entire sum of $7,200 shall immediately become due and payable."

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which was discharged on October 27, 1997. On September 14, the County of San Diego suspended Scissell's driver's license.

On March 15, 1999, Scissell filed a Motion for Injunctive Order, Return of Driver's License, and Attorney's Fees and Costs. On June 10, 1999, the court heard and denied Scissell's motion to waive interest. It lifted the suspension of Scissell's driver's license and ordered him to pay $100 per month.

DISCUSSION

Scissell contends the State of California may not charge interest

on support obligations under the Child Support Enforcement Act because (1) section 656(a)(3) states in part 11[a]ny amounts collected from a noncustodial parent under the plan shall reduce *dollar for dollar*, the amount of his obligation . . . " (italics added) and (2) the administrative regulations enforcing the Act provide for late fees, but not interest (See 45 C.F.R. § 302.75).

We review de novo questions of statutory interpretation. (Kurtz v. Calvo (1999) 75 Cal.App.4th 191, 193.) Section 656 provides:

> "(a) Collection processes
>
> "(1) The support rights assigned to the State or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes pursuant to section 608(a)(3) of this title. 11(2) The amount of such obligation shall be
>
> "(A) the amount specified in a court order which covers the assigned support rights, or
>
> (B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary.
>
> "(3) Any amounts collected from a noncustodial parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).
>
> (b) Nondischargeability "A debt (as defined in section 101 of Title 11) owed under State law to a State (as defined in such section) or municipality (as defined in such section) that is in

the nature of support and that is enforceable under this part is not released by a discharge in bankruptcy under Title 11.

Scissell contends section 656 limits his payments to $7,200, the amount specified in the judgment. Under subsection (a)(2), Scissell's obligation is the amount specified in a court order; that is, $7,200. Further, subsection (a)(3) provides the amounts collected reduce the noncustodial parent's obligation *dollar for dollar.* Therefore, Scissell concludes the State of California must apply his payments to reduce his $7,200 obligation. In other words, the Act does not provide for interest.

Scissell's argument ignores the specification in subsection (a)(1) that allows states to apply all local collection processes. In California, defaulting parents must pay interest on support arrearages. (Code Civ. Pro. § 1033; County *of Los Angeles v. Salas* (1995) 38 Cal.App.4th 510, 513.) Parents need not be advised they owe interest, because parents are charged with knowledge of the law. *(In re Marriage of Thompson* (1996) 41 Cal.App.4th 1049, 1057.) Therefore, even though Scissell's support judgment did not specify interest, Scissell is liable for that interest under California law.

"When 'interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature . . . . [Citation.]" *(Kokoszka v. Belford* (1974) 417 U.S. 642, 650.) Thus, in reviewing whether Congress intended states charge interest on support obligations, we read section 656 in connection with the other sections of the Act, which show that interest is allowable. For instance, the state agency that administers the state plan for child support must, among other things, operate a statewide data processing system that includes as part of its payment records, monthly support, interest, late fees and other penalties. Sec. 654 (16); 654a (e) (4)(A).4) There would be no reason for the Act to require the States to maintain records of interest if the Act

prohibited interest. Moreover, the terms "support order" and "child
support" are both defined to include interest. (Sec. 653 (p)5; 659 (i)(2).6)

4
Section 654a (d)(4)(A) provides: "Each case record in the State case registry with respect to which services are being provided under the State plan approved under this part and with respect to which a support order has been established shall include a reco rd of --[P] (A) the amount of monthly (or other periodic) support owed under the order and other amounts (including arrearages, interest or late payment penalties, and fees) due or overdue under the order[.] (Italics added.)

5
Section 653 (p) entitled "'Support order, defined" provides: "As used in this part, the term 'support order' means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or of the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys, fees, and other relief." (Italics added.)

6
Section 659(i)(2) provides: "The term child support', when used in reference to the legal obligations of an individual to provide such support, means amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing State, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and

which may include other related costs and fees, interest and penalties, income withholding, attorneys, fees, and other relief." (Italics added.)

We reject Scissell's contention that states are not allowed to collect interest because a federal regulation specifically provides for late fees (45 C.F.R. § 302.75) but no such regulation covers interest payments. When the Office of Child Support Enforcement of the Department of Health and Human Services promulgated the regulation that allowed states to collect late fees, it stated that states may collect interest:

"One commenter asked us to indicate the difference between interest and late payment fees. Late payment fees are not considered interest. Interest makes up for loss of purchasing power and is passed on to the family. For purposes of this program, late payment fees are a penalty for non-payment of support and are used to reduce a State's administrative costs. The State may collect both interest and late payment fees." (50 Fed. Reg. 19644 (May 9, 1995), italics added.) Therefore, the regulations do not prevent the State of California from collecting interest.

We also reject Scissell's contention that any debt he owes was discharged in bankruptcy. Support arrearages are not dischargeable in bankruptcy. (§ 656(b); Leibowitz v. County of Orange (In re Leibowitz) (B.A.P. 9th Cir. 1999) 230 13.R. 392, 395.) Interest on a nondischargeable debt is also not discharged in bankruptcy. (Pruning v. United States (1964) 376 U.S. 358, 363.) Therefore, Scissell's support arrearages and related interest were not discharged in his chapter 7 bankruptcy proceeding.

Because Scissell has not prevailed, we need not consider his request for attorney's fees under Code of Civil Procedure section 1021.5.

DISPOSITION The order is affirmed.

OIROURKE, J. WE CONCUR:

KREMER, P.J.

HUFFMAN, J.

3. CALIFORNIA SUPREME COURT DECISION

Court of Appeal, Fourth Appellate District, Division One - No.

D033956
S089370

IN THE SUPREME COURT OF CALIFORNIA

En Banc

SUPRME COURT
FILED
AUG - 9 2000
Fredrick K. Ohirich, Clerk

Deputy

COUNTY OF SAN DIEGO, Respondent,
v.

ANDY EUSTON SCISSELL, Appellant.

Petition for review DENIED. Mosk, J., is of the opinion the petition should be granted.

George

Chief Justice

4. 42 U.S.C 608(a)

U.S. Code as of: 01/05/99
Section 608. Prohibitions; requirements
(a) In general
(1) No assistance for families without a minor child
A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family, unless the family includes a minor child who resides with the family (consistent with paragraph (10)) or a pregnant individual.
(2) Reduction or elimination of assistance for noncooperation in establishing paternity or obtaining child support
If the agency responsible for administering the State plan approved under part D of this subchapter determines that an individual is not cooperating with the State in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not qualify for any good cause or other exception established by the State pursuant to section 654(29) of this title, then
the State -
(A) shall deduct from the assistance that would otherwise be provided to the family of the individual under the State program funded under this part an amount equal to not less than 25 percent of the amount of such assistance; and
(B) may deny the family any assistance under the State program.
(3) No assistance for families not assigning certain support rights to the State
(A) In general
A State to which a grant is made under section 603 of this title shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family

member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so provided to the family, which accrue (or have accrued) before the date the family ceases to receive assistance under the program, which

assignment, on and after such date, shall not apply with respect to any support (other than support collected pursuant to section 664 of this title) which accrued before the family received such assistance and which the State has not collected by -

(i)(I) September 30, 2000, if the assignment is executed on or after October 1, 1997, and before October 1, 2000; or

(II) the date the family ceases to receive assistance under the program, if the assignment is executed on or after October 1, 2000; or

(ii) if the State elects to distribute collections under section 657(a)(6) of this title, the date the family ceases to receive assistance under the program, if the assignment is executed on or after October 1, 1998.

(B) Limitation

A State to which a grant is made under section 603 of this title shall not require, as a condition of providing assistance to any family under the State program funded under this part, that a member of the family assign to the State any rights to support described in subparagraph (A) which accrue after the date the family ceases to receive assistance under the program.

(4) No assistance for teenage parents who do not attend high school or other equivalent training program

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual who has not attained 18 years of age, is not married, has a minor child at least 12 weeks of age in his or her care, and has not successfully completed a high-school education (or its equivalent), if the individual does not participate in -

(A) educational activities directed toward the attainment of

a high school diploma or its equivalent; or
(B) an alternative educational or training program that has been approved by the State.
(5) No assistance for teenage parents not living in adult-supervised settings
(A) In general
(i) Requirement
Except as provided in subparagraph (B), a State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to an individual described in clause (ii) of this subparagraph if the individual and the minor child referred to in clause (ii)(II) do not reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the individual as such parent's, guardian's, or adult relative's own home.
(ii) Individual described
For purposes of clause (i), an individual described in this clause is an individual who -
(I) has not attained 18 years of age; and
(II) is not married, and has a minor child in his or her care.
(B) Exception
(i) Provision of, or assistance in locating, adult-supervised living arrangement
In the case of an individual who is described in clause (ii), the State agency referred to in section 602(a)(4) of this title shall provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement, taking into consideration the needs and concerns of the individual, unless the State agency determines that the individual's current living arrangement is appropriate, and thereafter shall require that the individual and the minor child referred to in subparagraph (A)(ii)(II) reside in such living arrangement as a condition of the continued receipt of assistance under the State program funded under this part attributable to funds provided by the Federal Government (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to

be appropriate).

(ii) Individual described

For purposes of clause (i), an individual is described in this clause if the individual is described in subparagraph (A)(ii), and -

(I) the individual has no parent, legal guardian, or other appropriate adult relative described in subclause (II) of his or her own who is living or whose whereabouts are known;

(II) no living parent, legal guardian, or other appropriate adult relative, who would otherwise meet applicable State criteria to act as the individual's legal guardian, of such individual allows the individual to live in the home of such parent, guardian, or relative;

(III) the State agency determines that -

(aa) the individual or the minor child referred to in subparagraph (A)(ii)(II) is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the individual's own parent or legal guardian; or

(bb) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and the minor child lived in the same residence with the individual's own parent or legal guardian; or

(IV) the State agency otherwise determines that it is in the best interest of the minor child to waive the requirement of subparagraph (A) with respect to the individual or the minor child.

(iii) Second-chance home

For purposes of this subparagraph, the term "second-chance home" means an entity that provides individuals described in clause (ii) with a supportive and supervised living arrangement in which such individuals are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

(6) No medical services

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide medical services.

(B) Exception for prepregnancy family planning services

As used in subparagraph (A), the term "medical services" does not include prepregnancy family planning services.

(7) No assistance for more than 5 years

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to this paragraph.

(B) Minor child exception

In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month for which such assistance was provided with respect to the individual and during which the individual was -

(i) a minor child; and

(ii) not the head of a household or married to the head of a household.

© Hardship exception

(I) In general

The State may exempt a family from the application of subparagraph (A) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(ii) Limitation

The average monthly number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect.

(iii) Battered or subject to extreme cruelty defined
For purposes of clause (i), an individual has been battered or subjected to extreme cruelty if the individual has been subjected to -
(I) physical acts that resulted in, or threatened to result in, physical injury to the individual;
(II) sexual abuse;
(III) sexual activity involving a dependent child;
(IV) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;
(V) threats of, or attempts at, physical or sexual abuse;
(VI) mental abuse; or
(VII) neglect or deprivation of medical care.
(D) Disregard of months of assistance received by adult while living in Indian country or an Alaskan Native village with 50 percent unemployment
(i) In general
In determining the number of months for which an adult has received assistance under a State or tribal program funded under this part, the State or tribe shall disregard any month during which the adult lived in Indian country or an Alaskan Native village if the most reliable data available with respect to the month (or a period including the month) indicate that at least 50 percent of the adults living in Indian country or in the village were not employed.
(ii) "Indian country" defined
As used in clause (i), the term "Indian country" has the meaning given such term in section 1151 of title 18.
(E) Rule of interpretation
Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.
(F) Rule of interpretation
This part shall not be interpreted to prohibit any State from expending State funds not originating with the Federal Government on benefits for children or families that have become ineligible for assistance under the State program funded under this part by reason of subparagraph (A).

(G) Inapplicability to welfare-to-work grants and assistance
For purposes of subparagraph (A) of this paragraph, a grant made under section 603(a)(5) of this title shall not be considered a grant made under section 603 of this title, and noncash assistance from funds provided under section 603(a)(5) of this title shall not be considered assistance.

(8) Denial of assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in 2 or more States
A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with
respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under programs that are funded under this subchapter, subchapter XIX of this chapter, or the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), or benefits in 2 or more States under the supplemental security income program under subchapter XVI of this chapter.
The preceding sentence shall not apply with respect to a conviction of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct which was the subject of the conviction.

(9) Denial of assistance for fugitive felons and probation and parole violators
(A) In general
A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance to any individual who is -

(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

(ii) violating a condition of probation or parole imposed under Federal or State law.

The preceding sentence shall not apply with respect to conduct of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct.

(B) Exchange of information with law enforcement agencies

If a State to which a grant is made under section 603 of this title establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing a Federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that -

(i) the recipient -

(I) is described in subparagraph (A); or

(II) has information that is necessary for the officer to conduct the official duties of the officer; and

(ii) the location or apprehension of the recipient is within such official duties.

(10) Denial of assistance for minor children who are absent from the home for a significant period

(A) In general

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for a minor child who has been, or is expected by a parent (or other caretaker relative) of the child to be, absent from the home for a period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 180 consecutive days as the State may provide for in the State plan submitted pursuant to section 602 of this title.

(B) State authority to establish good cause exceptions

The State may establish such good cause exceptions to subparagraph (A) as the State considers appropriate if such exceptions are provided for in the State plan submitted pursuant to section 602 of this title.

(C) Denial of assistance for relative who fails to notify State

agency of absence of child

A State to which a grant is made under section 603 of this title shall not use any part of the grant to provide assistance for an individual who is a parent (or other caretaker relative) of a minor child and who fails to notify the agency Aministering the State program funded under this part of the absence of the minor child from the home for the period specified in or provided for pursuant to subparagraph (A), by the end of the 5-day period that begins with the date that it becomes clear to the parent (or relative) that the minor child will be absent for such period so specified or provided for.

(11) Medical assistance required to be provided for certain families having earnings from employment or child support

(A) Earnings from employment

A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX of this chapter shall provide that in the case of a family that is treated (under section 1396u-1(b)(1)(A) of this title for purposes of subchapter XIX of this chapter) as receiving aid under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid because of hours of or income from employment of the caretaker relative (as defined under this part as in effect on such date) or because of section 602(a)(8)(B)(ii)(II) of this title (as so in effect), and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX of this chapter for an extended period or periods as provided in section 1396r-6 or 1396a(e)(1) of this title (as applicable), and that the family will be appropriately notified of such extension as required by section 1396r-6(a)(2) of this title.

(B) Child support

A State to which a grant is made under section 603 of this title and which has a State plan approved under subchapter XIX of this chapter shall provide that in the case of a family that is treated (under section 1396u-1(b)(1)(A) of this title for purposes of subchapter XIX of this chapter) as receiving aid

under a State plan approved under this part (as in effect on July 16, 1996), that would become ineligible for such aid as a result (wholly or partly) of the collection of child or spousal support under part D of this subchapter and that was so treated as receiving such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX of this chapter for an extended period or periods as provided in section 1396u-1(c)(1) of this title.

5. CODE OF FEDERAL REGULATIONS.

[Code of Federal Regulations]
[Title 45, Volume 2, Parts 200 to 499]
[Revised as of October 1, 1999]
From the U.S. Government Printing Office via GPO Access
[CITE: 45CFR302.50]

[Page 183]
PART 302--STATE PLAN REQUIREMENTS--Table of Contents
Sec. 302.50 Assignment of rights.

The State plan shall provide as follows:

(a) An assignment of support rights, as defined in Sec. 301.1 of this chapter, constitutes an obligation owed to the State by the individual responsible for providing such support. Such obligation shall be established by:

(1) Order of a court of competent jurisdiction or of an administrative process; or

(2) Except for obligations assigned under 42 CFR 433.146, other legal process as established by State laws, such as a legally enforceable and binding agreement.

(b) The amount of the obligation described in paragraph (a) of this section shall be:

(1) The amount specified in the order of a court of competent jurisdiction or administrative process which covers the assigned support rights.

(2) If there is no court or administrative order, an amount determined in writing by the IV-D agency as part of the legal process referred to in paragraph (a)(2) of this section in accordance with the requirements of Sec. 302.56; or

(c) The obligation described in paragraph (a) of this section shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(d) Any amounts which represent support payments collected from an individual responsible for providing support under the State plan shall reduce, dollar for dollar, the amount of his obligation under this section.

(e) No portion of any amounts collected which represent an assigned support obligation defined under Sec. 301.1 of this chapter may be used to satisfy a medical support obligation unless the court or administrative order designates a specific dollar amount for medical purposes.

[64 FR 6248, Feb. 9, 1999]

Code of Federal Regulations]
[Title 45, Volume 2, Parts 200 to 499]
[Revised as of October 1, 1999]
From the U.S. Government Printing Office via GPO Access
[CITE: 45CFR302.75]
[Page 190-191]

PART 302--STATE PLAN REQUIREMENTS--Table of Contents

Sec. 302.75 Procedures for the imposition of late payment fees on noncustodial parents who owe overdue support.

(a) Effective September 1, 1984, the State plan may provide for imposition of late payment fees on noncustodial parents who owe overdue support.

(b) If a State opts to impose late payment fees--

(1) The late payment fee must be uniformly applied in an amount not less than 3 percent nor more than 6 percent of overdue support.

(2) The fee shall accrue as arrearages accumulate and shall not be reduced upon partial payment of arrears. The fee may be collected only after the full amount of overdue support is paid and any requirements under State law for notice to the noncustodial parent have been met.

(3) The collection of the fee must not directly or indirectly reduce the amount of current or overdue support paid to the individual to whom it is owed.

(4) The late payment fee must be imposed in cases where there has been an assignment under section 408(a)(3) of the Act or section 471(a)(17) of the Act or the IV-D agency is providing services under Sec. 302.33 of this chapter.

(5) The State may allow fees collected to be retained by the jurisdiction making the collection.

(6) The State must reduce its expenditures claimed under the Child Support

[[Page 191]]

Enforcement program by any fees collected under this section in accordance with Sec. 305.50 of this chapter.

(Approved by the Office of Management and Budget under control number
0960-0385)

[50 FR 19650, May 9, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56
FR 8004, Feb. 26, 1991; 64 FR 6249, Feb. 9, 1999]

6. STATE COURT RECORD WHERE FEDERAL ISSUE RAISED

POINTS AND AUTHORITIES

1. INTRODUCTION. On September 13, 1982 The County of San Diego filed a complaint against Mr. Scissel for reimbursement for Aid to Families with Dependent Children, (AFDC). A copy of that complaint is attached hereto as Exhibit "A". On September 21, 1982 Andy Scissel signed a "Statement of Respondent and Agreement Stipulation and Judgement". In the stipulation he agreed to reimburse the County of San Diego the sum of $7,200.00 at the rate of $50.00 per month. It is a lump sum order. There was no order for reimbursement of on going aide because the children were not currently receiving aide. A copy of that stipulation is attached hereto as Exhibit "B".

Thereafter Mr. Scissel made various payments. A copy of a payment history prepared by the District Attorney's office is attached hereto as Exhibit "C". It shows that Mr. Scissel has paid a total of $7,427.80. All of his payments were credited toward "interest". None of his payments were credited toward reducing the principal debt owed. The last payment was on 11/12/95 for $1,156.00. This was a payment made directly from a Workman's Compensation Award, (at that time Mr. Scissel was determined to be permanently disabled). When this last payment was made Mr. Scissel believed he had fulfilled his obligation. Apparently the County of San Diego thought so too because he received a "Child Support Consumer Credit Report Notification" indicating the balance due was "zero", (see Exhibit "D") on 1/27/96.

In March of 1996 the County of San Diego began collection efforts again. It contended that Mr. Scissel owed the sum of $9,366.74, (see Exhibit "E") and it threatened to take his drivers license. On July 14, 1997 Mr. Scissel filed a Chapter 7 Bankruptcy. A discharge was granted on October 27, 1997, see Exhibit "F". While Mr. Scissel was in Chapter 7 the County of San Diego did in fact have Mr. Scissel's drivers license revoked. It was reinstated on August 8, 1997, probably because revoking

his drivers license while he was in Chapter 7 was a violation of the automatic stay, (11 USC 362).
On September 14, 1998 Mr. Scissel's drivers license was again suspended. That suspension is in effect now. The County of San Diego refuses to reinstate Mr. Scissel's drivers license, see Exhibit "G" without additional payments. It is Mr. Scissel's position herein that he has not only paid his obligation the County of San Diego in full, he has over paid them by $227.80.

2. A SUMMARY OF THE LEGAL ISSUE PRESENTED. This issue has not been raised before, or if it has, it has not made it's way to the appellate courts. The essence of the argument is that:

a. The County of San Diego collects reimbursement for AFDC pursuant to a federal "plan". The plan defines the obligation and provides that the amounts collected from the obligor parent shall reduce the amount of the "obligation", "dollar for dollar";
b. There is nothing in the federal statute or the CFR's that authorize "interest" on the past due payments;
c. The federal scheme authorizes the imposition of a "late fee" of not less than 3% nor more than 6%;
d. California has not adopted the imposition of a "late fee";
e. If California had adopted a "late fee" the late fee is collected after the principal is paid; and
f. "Late fees" would be dischargeable bankruptcy.

3. NEITHER THE FEDERAL STATUTE NOR THE CFR's AUTHORIZE INTEREST PAYMENTS. The federal law authorizing the "plan" is found at 42 USC 601 et seq. The particular statute in question is found at 42 USC 656. This statute discusses the "obligation" and the collection process.

At 42 USC 656(2) the stature defines "the obligation". The definition does not include anything that could be construed as "interest". The "obligation" is either the amount specified in the court order or the amount determined by the state's approved formula.
At 42 USC 656(3) the statute reads,
"**Any amounts collected from a noncustodial parent under the**

plan shall reduce, dollar for dollar, the amount of his obligation...."
A copy of the federal statue is attached hereto in the appendix. There is nothing in the federal statute whatsoever that authorizes interest.
The Code of Federal Regulations (CFR's) that apply to 42 USC 602 et seq. are found at CFR 302 et seq. CFR 302.50 reads,
"(d) Any amounts which represent support payments collected from an individual responsible for providing support under the State plan shall reduce, dollar for dollar, the amount of his obligation under this section."

Under the clear and unambiguous language of the federal statute and the CFR, all of Mr. Scissel's payments should have been applied, "dollar for dollar" to principal, not interest. There is nothing ambiguous about this phrase, "dollar for dollar",

"The function of the court in construing a statute "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Code Civ. Proc., § 1858.) "If there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.' " (Lennane v. Franchise Tax Bd. (1994) 9 Cal.4th 263, 268 [36 Cal.Rptr.2d 563, 885 P.2d 976].) Therefore, if a statute is unambiguous, it must be applied according to its terms. Judicial construction is neither necessary nor {Page 16 Cal.4th 493} permitted. When statutory construction is necessary, the court's primary responsibility is to carry out the intent of the Legislature to the extent possible. (Code Civ. Proc., § 1859; People v. Wells (1996) 12 Cal.4th 979, 985 [50 Cal.Rptr.2d 699, 911 P.2d 1374]; Parris v. Zolin (1996) 12 Cal.4th 839, 845 [50 Cal Rptr.2d 109, 911 P.2d 9].)", Ventura County Deputy Sheriffs' Assn. vs. Board of Retirement 16 Cal 4th 483.
Thus, every dollar collected from Mr. Scissel should have been credited as a payment against the principal obligation and nothing else. As may be seen from Exhibit E attached hereto, the County

of San Diego applies the payments received to accrued interest first and then to the principal.

4. THE STATE COULD HAVE CHARGED A "LATE FEE" BUT IT DID NOT. The federal government did not leave the State of California without a remedy for late payments. The remedy is found at CFR 302.75. This section permits a late fee of **"not less than 3 percent nor more than 6 percent"** It goes on to say that the **"the fee may only be collected only after the full amount of overdue support is paid in full..."** A copy of all quoted CFR's is attached hereto in the appendix.
The conclusion is therefore inescapable that Mr. Scissel has paid his obligation in full. The "interest" that he has been charged is unlawful in that at all times it exceeded six percent and there is no evidence that the State of California's "plan" under the federal scheme included a provision for the late fee.

5. UNDER THE SUPREMACY CLAUSE THE FEDERAL LAW PREEMPTS ANY AND ALL STATE STATUTES ON THIS SUBJECT. A very good explanation of the relationship between the federal law and the state law on this subject is found in Jackson v Rapps 947 F2d 332 (8th Cir.1991). The issue in that case was whether or not a state could collect all of the AFDC it paid out or if it was limited to the amount defined in 42 USC 656(a)(2). This is the section which defines "the obligation", (see page 333-334). The court held on page 337 that the states were required to follow the criteria set forth in the federal statutes and applicable CFRs. This is because the language in the statues and the CFRs are mandatory and because the states voluntarily participate in the program in order to receive federal funds.

In the end the analysis is really very simple. If the states want the federal money, they have to follow the federal rules. All of them. They can't just pick and choose what they want of the federal scheme.

6. ANY "LATE FEE" WOULD HAVE BEEN DISCHARGED IN THE BANKRUPTCY. Under 11 USC 523(5) of the bankruptcy code a discharge under section 11 USC

727 does not discharge an individual debtor from any debt which is "**alimony, maintenance or support**". Section 42 USC 656(b) also excepts from discharge any debt that, "**is in the nature of support and that is enforceable under this part...**"
It should go without saying that a "late fee" is not "support" or "in the nature of support". Thus, if there were some magic way to convert the "interest" that has been illegally charged by the District Attorney's Office to a "late fee", the debt has been discharge in the Chapter 7 case.

7. THE ILLEGALLY CHARGED "INTEREST" HAS BEEN DISCHARGED. Since there is nothing in the federal law which permits the charging of interest, the alleged obligation is discharged. There is nothing in 11 USC 523(5) or 42 USC 656(b) which would prevent the discharge of the illegally charged "interest".

8. RESPONDENT SHOULD BE AWARDED ATTORNEY'S FEES AND COSTS PURSUANT TO CCP 1021.5 Mr. Scissel may recover his attorneys fees under the "private attorney general doctrine" found at CCP 1021.5. The award is authorized when:
(1) the action has resulted in the enforcement of an important right affecting the public interest;
(2) a significant benefit has been conferred on the general public or large class of persons; and
(3) the necessity and financial burden of private enforcement makes the award appropriate.
Moreover, they award should be substantial, County of San Diego vs Catherine Lamb 1998 CA 419 <http://www.versuslaw.com>.

There are many similarities between this case and San Diego vs Catherine Lamb. We have a citizen taking on the county's District Attorney's Office; we have a legal issue that has not been litigated before; and a favorable result will benefit all parents in this state who are making payments on AFDC cases and/or who had their drivers licenses revoked.

9. CONCLUSION. Mr. Scissel's debt to the county of San

Diego should be marked "paid in full", he should be refunded any over payments; his drivers license should be restored to him; and his attorney should be paid.
Dated: March 1, 1999

Janet A. Lawson
Attorney for Respondent